

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

McGRAW-HILL, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0228

Decision No. CU 774

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by McGRAW-HILL, INC. in the amount of \$25,575.35 based upon the asserted loss of payment for merchandise shipped to Cuba and a bank account.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record reflects that McGraw-Hill Book Company, Inc. was organized under the laws of the State of New York on July 14, 1913 and that the sole stockholder was McGraw-Hill Publishing Company, Inc., a corporation organized under the laws of the State of New York. The record reflects further that McGraw-Hill International Corporation and McGraw-Hill Book Company, Inc. merged into McGraw-Hill Publishing Company, Inc. on December 31, 1960 and December 13, 1963, respectively, and that on January 2, 1964, the name of the corporation was changed to McGRAW-HILL, INC.

The Vice-President of the claimant corporation has certified that the claimant was organized under the laws of the State of New York and that all times between January 1, 1959 and presentation of this claim on July 14, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that four tenths percent of its 1,444,959 stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copies of several balance sheets, invoices, bills of lading and correspondence on various accounts reflecting monies which are due and owing to claimant from the following consignees:

P. Fernandez & Co.	\$5,623.59,
Gonzalez Medina y Cia	1,732.62,
Swan American Book Store	244.07,
Libreria Minerva	149.46,
Lib Y Distribuidora	207.68,
Independent News Co.	113.45,
La Casa Belga	10.72,
Mr. F. Herrera Navarro	<u>25.25.</u>
	\$8,106.84

Claimant states that it does not have any evidence that payments were made in pesos to the local Cuban banks. Claimant states further that it has not received these funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 26, 1960 as to \$1,732.62, July 21, 1960 as to \$25.25, July 15, 1960 as to \$207.68, July 17, 1960 as to \$5,623.59, one day after payment was due; and November 16, 1960 as to \$149.46, August 4, 1960 as to \$113.45, March 12, 1960 as to \$10.72, one day after the advanced payment date was entered on the ledger sheet.

Claimant further contends that it lost a bank account in Cuba having a balance of 17,678.77 pesos. According to the balance sheet of The First National City Bank of New York for claimant and the cash sheets of claimant, the record reflects that claimant had a balance of 17,678.77 Cuban pesos on deposit with The First National City Bank of New York.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these things affect the account of the claim in Claim No. CU-0228.

Law 568, published in the Cuban Official Gazette on September 29, 1959 referred to above, forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that amount was placed in a special account in his name. This did not affect bank accounts already in existence. By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some minor exceptions. However, Laws 963 and 964 do not affect Claim No. CU-0228 in which the account did not arise from currency exchange.

CU-0228

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as had not been established and confiscated by Laws 963 and 964, supra. In the absence of evidence to the contrary, the Commission finds that claimant's above described bank account, totalling 17,678.77 pesos, was taken by the Government of Cuba on December 6, 1961. See the Claim of Floyd W. Auld, FCSC Claim No. CU-0020.)

Further, the Commission finds that on December 6, 1961, claimants 17,678.77 pesos had a value of \$17,678.77 and that it suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of its bank account by the Government of Cuba as of December 6, 1961.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of this loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$17,678.77 from December 6, 1961 to the date on which the provisions are made for the settlement thereof.

CU-0228

CERTIFICATION OF LOSS

The Commission certifies that McGRAW-HILL, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Five Thousand Five Hundred Seventy-Five Dollars and Thirty-Five Cents (\$25,575.35) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

30 NOV 1967

Handwritten: CERTIFIED
of the Commission
Decision on 11/9/67
Clerk of the Court

Handwritten: Edward D. Re
Edward D. Re, Chairman

Handwritten: Theodore Jaffe
Theodore Jaffe, Commissioner

Handwritten: Lavern R. Dilweg
Lavern R. Dilweg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)